

Application No. 10/505,345
Amendment dated October 16, 2006
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Remarks

Claims 1-20 are pending in the application. Claims 1-20 were rejected. Claims 1-3 and 12 are amended. Claim 1 is the independent claim. Reconsideration of the amended application is respectfully requested.

The examiner objected to the disclosure as making reference to the claims in the description. The written description is amended to correct this informality. The objection, therefore, should be withdrawn.

The examiner objected to the drawings as not showing every feature of the invention recited in the claims. A new Figure 3 is submitted herewith, which shows the features noted by the examiner. The written description is also amended to make reference to the new drawing figure. The objection, therefore, should be withdrawn.

The examiner rejected claims 1-20 under 35 USC §112 as being indefinite for use of the term "and/or" throughout. The claims are amended to replace this term with more definite language. The rejection, therefore, should be withdrawn.

The examiner rejected claims 1-20 on the ground of non-statutory obviousness-type double-patenting as being unpatentable over claims 1-17 of US 6,505,495.

Independent claim 1, from which claims 2-10 depend, recites a test piece, which includes at least two shaped probe elements and at least one connecting element for connecting the at least two shaped probe elements. Each connecting element is provided with at least one fastening element at one end of the connecting element for fastening a shaped probe element. Length variations of either the at least two shaped probe elements, the at least one connecting element, or both are compensated by the fastening elements in

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such a way that the distance between respective two sensing points under standard measuring conditions is essentially constant.

In contrast, the cited patent claims a test specimen including four sensed elements and six connection elements. The sensed elements are connected by the connection elements such that each sensed element touches precisely three connection elements at end faces thereof, and such that the sensed elements and the connection elements together form a tetrahedron, on the corners of which the sensed elements are arranged. The sensed elements have first respective dimensions and are formed from a first material having a first coefficient of linear expansion, and the connection elements have second respective dimensions and are formed from a second material having a second coefficient of linear expansion. A combination of effects of the first material, the first dimensions, the second material, and the second dimensions results, under standard measurement conditions, in a cumulative coefficient of linear expansion between a first sensed point on a first one of the four sensed elements and a second sensed point on a second one of the four sensed elements that is essentially zero.

The examiner asserted that the pending claims are not patentably distinct from the cited claims because the pending claims are broader versions of the cited claims. However, as noted above, the pending claims recite a test piece that includes at least two shaped probe elements fastened to respective connecting elements by fastening elements. The probe elements and fastening elements are not claimed in the cited patent, and therefore the pending claims cannot be broader versions of the cited claims. Further, the probe elements and fastening elements are not disclosed in the cited patent, and therefore

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these features could not have been claimed in that patent. In the pending claims, the fastening elements compensate for length variations of the shaped probe elements and/or the connecting elements, whereas in the cited claims, the sensed elements and connection elements provide linear expansion effects between a first sensed point and a second sensed point that is essentially zero.

Thus, the pending claims and the cited claims provide similar results, but recite different structures providing different effects. The pending claims cannot be broader claims than those included in the cited patent, because the pending claims include features that are neither claimed nor disclosed in the cited patent. Thus, it is also the case that none of the pending claims is anticipated by or obvious over the claims of the cited patent, which is the standard for non-statutory double-patenting as set forth in the cases cited by the examiner. MPEP 804(II)(B)(1)(a).

For at least the reasons stated above, it is submitted that the pending claims are not obvious over the claims of US 6,505,495 under the judicially-created doctrine of non-statutory obviousness-type double-patenting. The rejection, therefore, should be withdrawn.

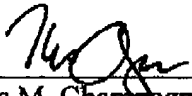
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Based on the foregoing, it is submitted that all objections and rejections have been overcome. It is therefore requested that the Amendment be entered, the claims allowed, and the case passed to issue.

Respectfully submitted,

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